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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 HOMER E. HAWKINS,) NO. EDCV 09-1862 JHN (SS)
12 Plaintiff,)
13 v.) **MEMORANDUM AND ORDER DISMISSING**
14 GARY SANDOR, et al.,) **THIRD AMENDED COMPLAINT WITH LEAVE**
15 Defendants.) **TO AMEND**
16 _____)
17

18 On June 11, 2010, Plaintiff, a state prisoner proceeding pro se,
19 filed a Third Amended Complaint ("Third Amended Complaint" or "TAC")
20 pursuant to 42 U.S.C. § 1983 against various state employees. For the
21 reasons stated below, the Third Amended Complaint is dismissed with
22 leave to amend.
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ALLEGATIONS OF THE COMPLAINT

The Third Amended Complaint names as defendants Gary Sandor, identified as Acting Warden of Ironwood State Prison;¹ N. Grannis, "Chief Staff-Inmate Appeals Branch"; Ronald W. Thomas, M.D., "Chief of Staff/Physician & Surgeon"; Nickolas Lind, M.D., "Chief of Sta[ff]/Physician & Surgeon"; and L. Bonnet, A.G.P.A., "Health Care Appeal Coordinator." (TAC at 3-4). Defendants Sandor, Grannis, and Bonnet are sued in their individual capacities only. (Id.). Defendants Thomas and Lind are sued in their individual and official capacities. (Id.).

According to the Third Amended Complaint, Defendant Sandor has "functional responsibility for the implementation of procedure" at the prison. (TAC at 5). He "[knew] or reasonably should [have] known" about the unsanitary conditions at the prison, including rodents in the kitchen and feces and urine on the meal trays and about Plaintiff's allegedly constitutionally infirm medical care. (See id. at 5-5A).² Defendants Grannis and Bonnet are sued for violating Plaintiff's constitutional rights by failing to properly review administrative appeals. (Id. at 5A-5B). Specifically, Plaintiff accuses Defendants Grannis and Bonnet of "screening out" Plaintiff's administrative appeals. (Id. at 5B). Plaintiff alleges Defendants Thomas and Lind provided Plaintiff

¹ It appears that Defendant Sandor is the former Acting Warden of Ironwood State Prison.

² Between pages 5 and 6 of the standard civil rights complaint form, Plaintiff attaches pages numbered "5 of 6-A" through "5 of 6-E." The Court will refer to these pages as 5A through 5E.

1 inadequate medical care by prescribing medication that harms him. (Id.
2 at 5C-5D). Plaintiff sues for damages and injunctive relief. (Id. at
3 6).

4 5 DISCUSSION

6 7 The Third Amended Complaint Must Be Dismissed With Leave To Amend

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9 Congress has mandated that district courts perform an initial
10 screening of complaints in civil actions where a prisoner seeks redress
11 from a governmental entity or employee. 28 U.S.C. § 1915A(a). This
12 Court may dismiss such a complaint, or any portions thereof, before
13 service of process if it concludes that the complaint (1) is frivolous
14 or malicious, (2) fails to state a claim upon which relief can be
15 granted, or (3) seeks monetary relief from a defendant who is immune from
16 such relief. 28 U.S.C. § 1915A(b); see also Lopez v. Smith, 203 F.3d
17 1122, 1126 & n.7 (9th Cir. 2000) (en banc).

18
19 When a plaintiff appears pro se in a civil rights case, the court
20 must construe the pleadings liberally and afford the plaintiff the
21 benefit of any doubt. Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d
22 621, 623 (9th Cir. 1988). In giving liberal interpretation to a pro se
23 complaint, the court may not, however, supply essential elements of a
24 claim that were not initially pled. Pena v. Gardner, 976 F.2d 469, 471-
25 72 (9th Cir. 1992). A court must give a pro se litigant leave to amend
26 the complaint unless it is "absolutely clear that the deficiencies of the
27 complaint could not be cured by amendment." Karim-Panahi, 839 F.2d at
28 623 (internal quotation marks omitted).

1 The Court must dismiss the Second Amended Complaint due to defects
2 in pleading. However, the Court grants Plaintiff leave to amend.³

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4 _____Plaintiff has once again failed to state a claim against Defendants
5 Grannis and Bonnet. Plaintiff alleges that his due process rights were
6 violated when Defendants Grannis and Bonnet screened out his
7 administrative appeals. (FAC at 5A-5B). The Ninth Circuit has held that
8 "inmates lack a separate constitutional entitlement to a specific prison
9 grievance procedure." Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.
10 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)); see also
11 Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009) ("The primary
12 purpose of a grievance is to alert the prison to a problem and facilitate
13 its resolution, not to lay groundwork for litigation."); Geiger v.
14 Jowers, 404 F.3d 371, 374 (5th Cir. 2005) (holding that an inmate "does
15 not have a federally protected liberty interest in having . . .
16 grievances resolved to his satisfaction"); Antonelli v. Sheahan, 81 F.3d
17 1422, 1430 (7th Cir. 1996) ("With respect to the Due Process Clause, any
18 right to a grievance procedure is a procedural right, not a substantive
19 one. Accordingly, a state's inmate grievance procedures do not give rise
20 to a liberty interest protected by the Due Process Clause." (citations
21 omitted)). These authorities demonstrate that Plaintiff cannot sue
22 Grannis and Bonnet for decisions they made while reviewing or processing
23 his internal grievances.

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26 _____
27 ³ Magistrate Judges may dismiss a complaint with leave to amend
28 without approval of the district judge. See McKeever v. Block, 932 F.2d
795, 798 (9th Cir. 1991).

1 Because Plaintiff had no due process right to have Defendants Grannis and
2 Bonnet follow a particular procedure or reach a specific decision,
3 Plaintiff's allegations against them fail to state a claim.
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5 The Court notes that Plaintiff presented a substantially similar
6 claim in both the First Amended Complaint and the Second Amended
7 Complaint. In both of these prior complaints, the Court dismissed the
8 claim regarding the prison grievance procedure because it failed to state
9 a claim. **Plaintiff is advised to consider carefully the Court's three**
10 **rulings on this defective claim if he chooses to file a Fourth Amended**
11 **Complaint.** Plaintiff should resist naming individuals as defendants if
12 there is no cognizable civil rights claim that can be stated against
13 particular defendants. Failure to correct the identified deficiencies
14 will likely result in a recommendation that an order be entered
15 dismissing the defective claims with prejudice.
16

17 CONCLUSION

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19 ____For the foregoing reasons, Plaintiff's Third Amended Complaint is
20 DISMISSED with leave to amend.
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22 If Plaintiff still wishes to pursue this action, he is granted
23 thirty (30) days from the date of this Memorandum and Order within which
24 to file a Fourth Amended Complaint, curing the defects in the Third
25 Amended Complaint described above. The Fourth Amended Complaint, if any,
26 shall be complete in itself and shall bear both the designation "Fourth
27 Amended Complaint" and the case number assigned to this action. It shall
28 not refer in any manner to the prior complaints. The caption of the

1 Fourth Amended Complaint must identify all parties that Plaintiff is
2 suing. Each page of the Fourth Amended Complaint must be consecutively
3 numbered.

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5 In any amended complaint, Plaintiff should confine his allegations
6 to those operative facts supporting each of his claims. Plaintiff is
7 advised that pursuant to Federal Rule of Civil Procedure 8(a), all that
8 is required is a "short and plain statement of the claim showing that the
9 pleader is entitled to relief." **Plaintiff is strongly encouraged to**
10 **utilize the standard civil rights complaint form when filing any amended**
11 **complaint, a copy of which is attached.** Plaintiff should make clear
12 which defendant committed a particular act of misconduct. **Individuals**
13 **who have not engaged in any alleged misconduct or civil rights violations**
14 **should not be named as defendants.** It is not necessary for Plaintiff to
15 cite case law or include legal argument. Moreover, irrelevant exhibits
16 or other extraneous documents are not necessary for Plaintiff to include
17 with his complaint.

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19 Plaintiff is explicitly cautioned that failure to timely file a
20 Fourth Amended Complaint, or failure to correct the deficiencies
21 described above, will result in a recommendation that this action be
22 dismissed for failure to prosecute pursuant to Federal Rule of Civil

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1 Procedure 41(b). Plaintiff is further advised that, if he does not wish
2 to pursue this action, **he may voluntarily dismiss it by filing a notice**
3 **of dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1).**
4 **A sample notice is attached to this order as well.**

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6 DATED: June 23, 2010 _____

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8 **/s/**

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10 SUZANNE H. SEGAL
11 UNITED STATES MAGISTRATE JUDGE
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